

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC**

In the Matter of:	)	
	)	
Request for Review/Appeal	)	
Of the Decision of the	)	
Universal Service Administrator by	)	
	)	
Cornerstone Schools of Alabama	)	CC Docket No. 02-6
BEN Number: 16062347	)	
	)	
Schools and Libraries Universal Service	)	
Support Mechanism	)	
	)	
Wireline Competition Bureau	)	

**REQUEST FOR REVIEW/APPEAL**

Marlene H. Dortch  
Federal Communications Commission  
Office of the Secretary  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

This is an appeal of a decision by the Universal Service Administrative Company (USAC) under the E-rate program (more formally known as the schools and libraries universal service support program) to deny Cornerstone Schools of Alabama funds for the following:

**USAC Administrator's Decisions on Appeal:**

Date of Letter:	June 04, 2012
Funding Year 2011-2012:	July 1, 2011 – June 30, 2012
Applicant Name:	Cornerstone Schools of Alabama
Billed Entity Number:	16062347

**SLD Contact Information:**

Maggie Taylor  
Cornerstone Schools of Alabama  
31100 Solon Road  
P.O. Box 39490  
Solon, OH 44139  
Phone: (216) 514-3336  
Fax: (216) 514-3337

**Funding Request Numbers Appealed:**

Form 471 Application Number: 818604  
Funding Request Number: 2227124

**USAC's Reason for Denial:**

“...This funding request is denied as a result of a Cost Effectiveness Review, which has determined that your request for Basic Maintenance of IC has not been justified as being cost effective as required by FCC Rules. The cost to support the schools 119 cabling drops at \$91.82 is excessive. The cost of maintenance per piece of equipment per piece of equipment at \$2,292.75 is condisered excessive. The cost of maintenance per student at \$405.41 is excessive. The ratio of students per wireless access point at 14.2 is excessive....” [Emphases Added]

**ISSUE:**

**In the context of this appeal, is there an FCC Rule that defines “cost effective” for off-site basic maintenance?<sup>1</sup>**

**RESPONSE AND REQUEST FOR REVIEW:**

Cornerstone Schools of Alabama filed an FCC Form 470 for Basic Maintenance of Internal Connections. In conjunction with the Form 470, an RFP was released. In response to the Form 470 and RFP, **Cornerstone conducted a bid evaluation all in accordance with**

---

<sup>1</sup> While the USAC references “cost effective” this necessarily includes “most cost effective” which by definition means a fair and open bid process.

**objective FCC rules demanding a fair and open bid process.** Cornerstone's bid evaluation process, set forth below was made available to all bidders. It states:

“...Cornerstone Schools of Alabama  
E-Rate Bid Evaluation Process  
Basic Maintenance (On-Demand, Cabling)

RFP release date: February 14, 2011

RFP responses due: March 14, 2011

The SLD's web site sets forth what is required in the Bid Evaluation Process.

- The competitive bidding process must be fair and open.
- "Fair" means that all bidders are treated the same and that no bidder has advance knowledge of the project information.
- "Open" means there are no secrets in the process - such as information shared with one bidder but not with others - and that all bidders know what is required of them.
- The Form 470 or the RFP should be clear about the products, services, and quantities the applicant is seeking.
- Any marketing discussions held with service providers must be neutral, so as not to taint the competitive bidding process. That is, the applicant should not have a relationship with a service provider prior to the competitive bidding that would unfairly influence the outcome of a competition or would furnish the service provider with "inside" information or allow it to unfairly compete in any way.

The SLD states: “price must be the primary factor when constructing the evaluation of bid responses.”

While price should be the primary factor, price does not have to be the sole factor. Other relevant factors may include: prior experience including past performance; personnel qualifications including technical excellence; The SLD states that the following graph is an acceptable weighting of the evaluation factors to apply in evaluating bid responses:

<u>Factor</u>	<u>Weight</u>
Price	30
Prior experience	25
Personnel qualifications	20

Management capability	15
Environmental objectives	10
Total	100

Note that the price competitiveness of services or products that are ineligible for support cannot be factored into the evaluation of the most cost-effective supplier of eligible services.

Cornerstone Schools of Alabama  
E-Rate Bid Evaluation Process  
Basic Maintenance (On-Demand, Cabling)

RFP release date: February 14, 2011

RFP responses due: March 14, 2011

Key Points in the Bid Evaluation Process:

- Documentation is essential
- Bid process must be consistent with local, state BID/RFP procurement guidelines
- All evaluations must be based on the same criteria, with price as the primary factor, but not necessarily the sole factor.

Documentation:

	Vendor 1
Company:	TekLinks
Contact:	Wesley Templeton 205-314-6600
Document:	Quote for Basic Maintenance (Hourly, On-Demand and Cabling)

1. Bid conference held? Yes/No, If Yes, When? No
2. Evaluation sheet for each vendor follows. Yes
3. "Bid Award" committee? Yes/No, If Yes. Who? No

Vendor 1: [TekLinks]

Vendor Representative: Wesley Templeton

Vendor Products/Services: Basic Maintenance

Evaluation:

<u>Factor</u>	<u>Weight</u>	<u>Evaluation</u>
Price	30	<b>30</b>
Prior experience	25	<b>25</b>
Personnel qualifications	20	<b>20</b>
Management capability	15	<b>15</b>
Environmental objectives	10	<b>10</b>
Total	100	<b>100</b>

Other key bid criteria. Local vendor; understands school district issues, etc. Please note below:

**At the conclusion of the Form 470 28-day waiting period, we only received one bid, which was from TekLinks. We reviewed the bid for cost effectiveness and selected TekLinks as the provider to Basic Maintenance...” [Emphases Added]**

In accordance with USAC procedure, Cornerstone Schools provided the following table for the list of equipment that is covered by the Off-Site Basic Maintenance of Internal Connections:

<b>Product/Eligible Equipment</b>	<b>QTY</b>
<b>VoIP Equipment</b>	
2921VOICE BDL W/ PVD3-16 FL-CME-SRST-25 UC LIC PA	1
Cisco 2901-2921 IOS UNIVERSAL	1

UNITY EXPRESS LIC 5 MAILBOX CUCM & CUCME	10
1PT 2 GEN MULTIFLEX TRUNK VOICE/WAN INT CARD T1/E1	1
4PT VOICE I/F CARD FXS AND DID	1
Unified Communication License for Cisco 2901-2951	1
<b>Router</b>	
Modular Router w/2xFE, 2 WAN slots, 64 FL/256 DR	1
Four port 10/100 Ethernet switch interface card	1
Rackmount kit for 1841	1
64MB Cisco 1800 Compact Flash Memory	1
128 to 256MB SODIMM DRAM factory upgrade for the Cisco 1841	1
<b>Switches</b>	
CATALYST 2960 48 10/100 1000BT +2 SFP LAN BSE IMG	4
CISCO 7304 10700 SFP 1000BASE-SX SPARE	2
<b>Wireless Access Points and Antennas</b>	1
CISCO AIRONET 1130AG 802.11AG LWAPP ANT	1
CISCO 5GHZ 3.5DBI DIPOLE ANT RP-TNC	6
2.2DBI DIPOLE ANT STD RUBBER DUCK	6
<b>WLS LAN CONTROLLER</b>	
CISCO WLS LAN CONTROLLER 2106	1
Aironet 1230AG Series 802.11A/B/G Access Point	3
CISCO 1100 SERIES AP INT ANT FCC CNFG 802.11A/G	2
<b>ASA</b>	
ASA 5510 Appliance with SW, 5FE,3DES/AES	1
<b>CABLING</b>	

The Applicant also provided the following scope of work:

Hourly tasks on an as-needed basis with the following list of activities to be performed for the eligible equipment: (all of these activities occur only when requested/called by the school district)

- Perform preliminary diagnosis of problems.
- Hardware troubleshooting and repair.
- Respond to hardware/networking problems with corrective procedures.
- As needed maintenance for maintaining optimal network connectivity.
- Perform diagnostic tasks to isolate hardware/network error conditions and determine if problems are due to equipment, cabling or network errors.
- Perform diagnostic tasks to isolate hardware/network error conditions or performance degradation.
- Perform root cause analysis on persistent, intermediate issues or major internal connectivity service issues related to hardware, networking and operating system and related problems.
- Determine if problems are due to hardware, software, cabling and/or some combination.
- Resolve routine and complex hardware, cabling, and network problems.
- Perform efficient corrective action and resolution.
- Test resolutions to problems, if necessary re-diagnose and isolate errors. Re-test as necessary, until problems are resolved.
- Certify/log all resolutions as completed.
- As part of issue closeout, certify and log all resolutions.

## **ARGUMENT**

The FCC has directed program applications to take full advantage of the competitive market to obtain cost-effective services and to minimize waste, fraud, and abuse. *FCC 03-313*,

*Para 2; Universal Service Order, 12 FCC Rcd at 9029-30, para. 481.* To guard against waste, fraud and abuse, Applicants are repeatedly told to follow the rules.

The FCC's rules:

do not expressly establish a bright line test for what is a "cost effective service." Although the FCC has requested comment on whether it would be beneficial to develop such a test, it has not, to date, enunciated bright line standards for determining when a particular service is priced so high as to be considered excessive or not cost-effective. *See Schools and Libraries Universal Support Mechanism, CC Docket No. 02-6, Third Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 26912 (2003).* [Emphases added]

Contrary to what the USAC said in Applicant's FCDL, there is no FCC Rule that defines "cost effective" or "most cost effective" for off-site basic maintenance. Even though the Applicant followed all objectively set forth fair and open bid procedures, the application was denied based on an ambiguous "cost effectiveness review" whose guidelines were never made clear.

While USAC references "cost effective" this necessary includes "most cost effective" which by definition means a fair and open bid process. The cost effectiveness rule that was applicable at the time of Petitioner's request for funding is 47 C.F.R. § 54.511(a). That rule provides:

a) Selecting a provider of eligible services. In selecting a provider of eligible services, schools, libraries, library consortia, and consortia, including any of those entities shall carefully consider all bids submitted and must select the most cost effective service offering. In determining which service offering is the most cost effective, entities may consider relevant factors other than the pre-discount prices submitted by providers but price should be the primary factor considered.

Cornerstone's bid evaluation process, set forth below was made available to all bidders:



Evaluation:

Vendor 1: [TekLinks]

Vendor Representative: Wesley Templeton

Vendor Products/Services: Basic Maintenance

Evaluation:

<u>Factor</u>	<u>Weight</u>	<u>Evaluation</u>
Price	30	<b>30</b>
Prior experience	25	<b>25</b>
Personnel qualifications	20	<b>20</b>
Management capability	15	<b>15</b>
Environmental objectives	<u>10</u>	<b>10</b>
Total	100	<b>100</b>

Other key bid criteria. Local vendor; understands school district issues, etc. Please note below:

**At the conclusion of the Form 470 28-day waiting period, we only received one bid, which was from TekLinks. We reviewed the bid for cost effectiveness and selected TekLinks as the provider to Basic Maintenance. [Emphases Added]**

**Total Price of the not-to-exceed Basic Maintenance contract: \$75,000.00**

As is in evidence above, price was the primary factor considered when evaluating vendor responses.

In the *Tennessee Order, FCC 99-216, DA 99-2098*, the FCC determined that a competitive bidding process complies with program rules when price is taken into account during bid selection and the contract is awarded to the **most cost-effective bidder**. The FCC

further concluded that other factors, such as prior experience, personnel qualifications, and management capability, also may form a reasonable basis on which to evaluate whether an offering is cost-effective.

In the *Ysleta Order*, FCC 03-313, the FCC revised the policies established in the *Tennessee Order*. The FCC concluded that price must be the primary factor in selecting a winning bid. This policy differs from the direction given in the *Tennessee Order* in that schools are now required to have a separate “cost category” when evaluating bids and that category must be given more weight than any other category. The FCC stated that if, for example, a school assigns 10 points to reputation and 10 points to past experience, the school would be required to assign at least 11 points to price. In the *Ysleta Order*, the FCC acknowledged that the “varying phraseology in the same decision created some ambiguity on this issue.” *See Request for Review by Ysleta Independent School District of the Decision of the Universal Service Administrator, CC Docket Nos. 96-45, 97-21, Order, 18 FCC Rcd 26406, 26429, para. 50 (2003).*

The record shows that Applicant conducted a competitive bidding process that adhered to FCC/USAC principles. The Applicant submitted documentation to USAC detailing the competitive bidding process, including cost evaluation criteria. The 470, RFP and evaluation was based on equipment; and work to be performed on equipment. The Applicant also evaluated the responsive bidders, using price as a primary consideration, and selected the vendor that offered the most cost-effective offering. As stated in *Academia Discipulos de Cristo Bayamon, Puerto Rico, et al., DA 06-1642, Released: August 15, 2006*, USAC should consider whether price was considered as a primary factor for vendor selection [by the Applicant] and whether the most cost-effective services were selected.

Based on these factors, Applicant’s competitive bidding processes did not violate program rules. There is no evidence of waste, fraud or abuse, or misuse of funds, or a failure to adhere to core program requirements.

In the Universal Service First Report and Order, the FCC determined that support for internal connections includes “basic maintenance services” that are “necessary to the operation

of the internal connections network.” Subsequently, in the Schools and Libraries Third Report and Order and codified at section 54.506(b) of the FCC’s rules, the FCC defined eligible basic maintenance services as “an internal connections service if, but for the maintenance at issue, the internal connection would not function and serve its intended purpose with the degree of reliability ordinarily provided in the marketplace to entities receiving such services.” Specifically, the FCC determined that basic maintenance includes “repair and upkeep of previously purchased eligible hardware, [and] wire,” and “basic technical support including configuration changes.” The FCC concluded, however, that basic maintenance services do not include: technical support contracts that provide more than basic maintenance; “services that maintain equipment that is not supported or that enhance the utility of equipment beyond the transport of information, or diagnostic services in excess of those necessary to maintain the equipment’s ability to transport information;” and services such as “24-hour network monitoring and management.” *Universal Service First Report and Order*, 12 FCC Rcd at 9021-22, para. 460. 47 C.F.R. 54.506(b); *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, *Third Report and Order and Second Further Notice of Proposed Rulemaking*, 18 FCC Rcd 26912, 26921-22, para. 23 (2003) (*Schools and Libraries Third Report and Order*). *Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26921-22, para. 23.

In the case of FRN 2227124 the Applicant is requesting support for basic maintenance of internal connections that are necessary to the operation of the Applicant’s internal connections network.

The Applicant cannot know what standard it must meet, if the so-called rules are subjective and inconsistent.<sup>2</sup> The winning bid was not only cost effective, but it was the most cost effective.

---

<sup>2</sup> The FCC has previously stated that schools and libraries are required to select “the most cost effective bid” when examining competing bids and that “price should be the primary factor.” However other relevant factors that can be considered include: “prior experience; personnel qualifications, including technical excellence; management capability, including schedule compliance; and environmental objectives.” See, *Telecommunications Discounts for Schools and Libraries: The “E-Rate” Program and Controversies*, Updated January 9, 2003

## **CONCLUSION**

Since the funding request, FRN 2227127, has been shown to comply with all FCC rules, Cornerstone Schools of Alabama respectfully requests that the FCC order funding for FRN 2227124 as requested. To do otherwise would be an arbitrary and capricious application of the FCC rules.

Respectfully Submitted by:

/s/ Rosemary Enos

Rosemary Enos  
on behalf of Cornerstone Schools of Alabama  
Epic Communications  
31100 Solon Road  
P.O. Box 39490  
Solon, OH 44139  
Phone: (216) 514-3336  
Fax: (216) 514-3337  
[rpenos@epicinc.org](mailto:rpenos@epicinc.org)

See attached Letter of Authorization (LOA) [Attachment A]

July 27, 2012

## **ATTACHMENT A**

**Schedule B for Year 14****Letter of Agency  
For the Year 2011 – 2012**

I hereby authorize **Epic Communications, Inc.** to submit FCC Form 470, FCC Form 471, and all other E-Rate forms for all E-Rate eligible services to the Schools and Library Division on behalf of the undersigned school district.

I understand that in submitting these forms on our behalf, you are making certifications for our school district. By signing this letter of agency, I make the following certifications:

- (a) I certify that the schools in our district are all schools under the statutory definitions of elementary and secondary schools found in the Elementary and Secondary Education Act of 1956, do not operate as for-profit businesses, and do not have endowments exceeding \$50 million.
- (b) I certify that the schools in our district have secured access to all of the resources, including computers, training, software, maintenance, and electrical connections necessary to make effective use of the services purchased as well as to pay the discounted charges for eligible services.
- (c) I certify that the schools in our district are all covered, or will be covered at the time funding is granted; by E-Rate approved technology plans (unless discounts are only being requested for basic local and long distance telephone service).
- (d) I certify that the services that our school district purchases using E-Rate discounts (as described in the law 47 U.S.C. Sec. 254) will be used solely for educational purposes and will not be sold, resold, or transferred in consideration for money or any other thing of value.
- (e) I certify that the entities eligible for support that I am representing have complied with all applicable state and local laws regarding procurement of services for which support is being sought.
- (f) I certify that our school district has complied with all E-Rate program rules and I acknowledge that failure to do so may result in denial of discount funding and/or cancellation of funding commitments.
- (g) I understand that the discount level used for shared services is conditional, for future years, upon ensuring that the most disadvantaged schools and libraries that are treated as sharing in the service, receive an appropriate share of the benefits from those services.
- (h) I certify that I am authorized to sign this letter of agency (LOA) for my District and, to the best of my knowledge, information, and belief, all information provided to Epic for E-Rate submission is true.

I understand that persons (including Epic, its employees and agents, and Independent Contractors) willfully make false statements on E-Rate forms or through this letter of agency can be punished by fine or forfeiture under the Communications Act, 47 U.S.C. Sec. 502, and 503(b), or fine or imprisonment under Title 18 of the United States Code, 18 U.S.C. Sec. 1001.

District: **Cornerstone Schools of Alabama** Signature: Nita Thompson

Name: Nita Thompson

Date: July 19, 2010 Title: Executive Director